

[*Simmons v. Arizona Public Service Co.*](#), 90-ERA-6 (ALJ Jan. 9, 1990)

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U.S. Department of Labor
Office of Administrative Law Judges
1111 20th Street N.W.
Washington, D.C. 20036

DATE: Jan. 9, 1990

IN THE MATTER OF

William David Simmons,
Complainant,

v.

Arizona Public Service Co.,
Respondent

CASE NO.: 90-ERA-6

RECOMMENDED DECISION AND ORDER

This proceeding arises under Section 210 of the Energy Reorganization Act, 42 U.S.C. §5851, and the regulations issued pursuant thereto 29 C.F.R. Part 24.

The parties to the above captioned matter submitted a Joint Motion with an attached Settlement requesting approval of their proposed agreement on January 8, 1990, attached hereto and incorporated herein. The submitted settlement failed to meet the regulatory requirements for settlements under the Energy Reorganization Act. 29 C.F.R. §18.9(b). The parties were informed of this oversight and executed a joint stipulation, which meets the regulatory requirements and by its terms modifies the original settlement accordingly. This joint stipulation was filed on January 9, 1990 and is attached hereto and incorporated herein.

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It is hereby RECOMMENDED that the Secretary of Labor accept and approve the parties' settlement agreement, as modified by the joint stipulation. After reviewing the

agreement, I found the settlement to be a fair, adequate and reasonable resolution of this matter.

JOHN M. VITTON

Deputy Chief Judge

JMV/DA/dm

UNITED STATES OF AMERICA
BEFORE THE U.S. DEPARTMENT OF LABOR

Case No. 90-ERA-6

WILLIAM DAVID SIMMONS,
Complainant,

v.

ARIZONA PUBLIC SERVICE CO., Respondent.

JOINT MOTION

The undersigned counsel for Complainant and counsel for Respondent hereby jointly move the Administrative Law Judge to enter the attached Recommended Decision and order approving the parties' full and final Settlement Agreement and to forward the attached Approval of Settlement as expeditiously as possible to the Secretary of Labor for her approval.

RESPECTFULLY SUBMITTED this 8th day
of January , 19 .

KOHN, KOHN COLAPINTO, P.C.

By
Stephen M. Kohn
517 Florida Ave., N.W.
Washington, D.C. 20001
Attorney for Complainant SNELL & WILMER

By
Rebecca Winterscheidt
3100 Valley Bank Center

Phoenix, Arizona 85073
Attorneys for Respondent

ORIGINAL for the foregoing
and all attachments mailed this
day of , 19 , to:

The Honorable Judge Vittone
Administrative Law Judge
U.S. Department of Labor
Suite 700 Vanguard Building
1111 20th Street, N.W.
Washington, D.C. 20036

U.S. DEPARTMENT OF LABOR
SECRETARY OF LABOR
WASHINGTON, D.C.

Case No. 90-ERA-6

WILLIAM DAVID SIMMONS,
Complainant,

v.

ARIZONA PUBLIC SERVICE CO., Respondent.

APPROVAL OF SETTLEMENT

In accordance with the recommendation of Administrative Law Judge John M. Vittone, the Settlement Agreement entered into by the parties in this case is approved pursuant to Section 210 of the Energy Reorganization Act, 42 U.S.C. §5851, and the Safe Drinking Water Act, 42 U.S.C. §300j-9.

Date this day of , 1990.

Secretary of Labor

UNITED STATES OF AMERICA

BEFORE THE U.S. DEPARTMENT OF LABOR

Case No. 90-ERA-6

WILLIAM DAVID SIMMONS,
Complainant,

v.

ARIZONA PUBLIC SERVICE CO.,
Respondent.

SETTLEMENT AGREEMENT
(SECTION 210 OF THE ENERGY REORGANIZATION ACT AND THE SAFE
DRINKING WATER ACT)

This Settlement Agreement constitutes a final and comprehensive resolution of Mr. William David Simmons' complaints against Respondent Arizona Public Service Company/Arizona Nuclear Power Project (APS/ANPP) to the Department of Labor (DOL) of October 13, 1989 and October 17, 1989 filed under Section 210 of the Energy Reorganization Act (ERA) and under the Safe Drinking Water Act (SDWA). Submitted simultaneously herewith is a joint notice to the Administrative Law Judge (ALJ) requesting approval of this full and final Settlement Agreement of the parties' claims.

1. Mr. Simmons voluntarily withdraws his DOL complaints of October 13, 1989 and October 17, 1989, and agrees not to file any additional or supplemental claims under Section 210 of the ERA or under the SDWA against APS/ANPP regarding any event or incident which occurred on or before the date of executive of this Settlement Agreement.

2. Mr. Simmons agrees that upon being reinstated to his prior position that he held on October 3, 1989, he will make up all deficient training courses.

3. This settlement shall not be construed as an admission of any wrongdoing by any of the parties, nor shall it be construed as an adjudication on the merits for or against either party. This Agreement settles all claims that Mr. Simmons had, or may have had, under Section 210 of the ERA, 42 U.S.C. 5851, or under the Safe Drinking Water Act, 42 U.S.C. 300 et seq., against Respondent from May 15, 1982 until and through the date this Settlement is ratified by the parties, and Complainant agrees not to file Section 210 charges or Safe Drinking Water Act charges based on any conduct by Respondent during this time period.

4. Nothing contained in this Settlement Agreement shall be construed to preclude Mr. Simmons from reporting any safety concerns to any Federal, State, or local governmental agency.

5. The parties acknowledge that on December 26, 1989, Respondent placed Mr. Simmons in the position of WRF Operations Engineer III at his request, at the same salary level he was at in the Work Evaluator position.

6. In exchange for the promises of Mr. Simmons contained herein, Respondent agrees to the following:

a) That Respondent will transfer Mr. Simmons to the same position he held prior to his termination from Palo Verde in October, 1989. Mr. Simmons will be required to take up all deficient training and Respondent will give Simmons time to study for and take all necessary training tests. He will make up those exams on a one-on-one basis unless there is a regularly scheduled class in which he can participate.

b) Pay Mr. Simmons backpay from, October 3, 1989 to December 22, 1989 in the amount of \$8,280.08;

c) Provide confirmation to American Express that Simmons has been reinstated to his former rate of pay;

d) Provide confirmation to the Bankruptcy Court that Simmons has been reinstated to his former rate of pay;

e) Pay Simmons the difference in value of his Pinnacle West stock at the date he sold the stock and the market value of the stock on the date the settlement is approved by the ALJ;

f) Bridge Simmons' pension rights for the period he was underemployed;

g) Bridge Simmons' seniority so that he suffered no loss in seniority due to the termination;

h) Ensure that Simmons losses no sick leave, vacation leave, or other accrued medical benefits as a result of his termination on October 3, 1989;

i) Permanently remove from Simmons' personnel file all documents concerning the October 3, 1989 incident with the exception of Simmons' October 3, 1989 statement which will remain in the personnel file for six (6) months from the date of the incident, October 3, 1989.

7. Respondent also agrees to reimburse Simmons for the following items up to the amounts indicated, subject to proper documentation;

a) Three depositions (\$834.05);

b) Copying costs (\$254.64)

c) Mailing costs (\$262.50);

d) Long distance (\$156.40);

- e) Rental car (\$39.69);
- f) Hotel for California (\$130.00);
- g) Air fare (,000);
- h) Witness fees (\$90.00);
- i) Hotel for Phoenix (\$270.00);
- j) Firm-incurred costs of mailing, etc. (\$700.00);
- k) Airline tickets (\$774); and
- l) Attorneys' fees (\$9,000)

Said expenses and costs will be paid within ten (10) working days of the date that Simmons' counsel indicates all receipts have been produced to Respondent's counsel, or within two working days after Respondent has received formal written notice that the Administrative Law Judge has approved the Settlement Agreement, whichever is later. Said payment is subject to the other approvals and executions set forth in paragraph 10. Payments of monies outlined in paragraph 7, e,f,g,i,j, and l shall be paid directly to counsel by check made payable to Kohn, Kohn & Colapinto, P.C.. Reimbursements under 6b,6e,7a,b,c,d,h, and k shall be directly paid to Mr. William David Simmons.

8. Respondent will not retaliate or discriminate against Simmons because he filed a Section 9110 or Safe Drinking Water Act charge against Respondent.

9. The parties agree to keep the terms of this Settlement Agreement confidential except that said terms can be revealed if required by federal or state law. The parties may reveal that the dispute has been settled and that the settlement resulted in Mr. Simmons being reinstated to the same position he held prior to his termination on October 3, 1969.

10. APS/ANPP's obligations to perform the covenants contained herein are contingent upon the Administrative Law Judge approving the parties' Settlement Agreement, the Department of Labor approving the OFCCP Agreement signed by Simmons within five working days of the date Mr. Simmons signs and delivers the agreement to APS counsel, and the execution of the Full Waiver and Release document. If the Department of Labor does not approve the OFCCP agreement within five working days, this term, becomes void. The parties agree to jointly request that the Department of Labor expedite the approval of the OFCCP agreement.

11. If the Secretary of Labor does not approve this Settlement Agreement as written, and the parties are unable to resolve the differences, and either party chooses to litigate the merits of this case under either Section 210 or the Safe Drinking Water Act, Mr.

Simmons will have ten (10) days in which to reimburse APS/ANPP for all disbursements in the above-mentioned paragraphs.

DATED THIS DAY OF JANUARY, 1990.

APPROVED AS TO FORM: COMPLAINANT:
William David Simmons

Stephen M. Kohn
Attorney for Complainant

RESPONDENT:
ARIZONA PUBLIC SERVICE COMPANY
ARIZONA NUCLEAR POWER PROJECT

Rebecca Winterscheidt
Attorney for Respondent

BY:

ITS:

UNITED STATES OF AMERICA
BEFORE THE U.S. DEPARTMENT OF LABOR

Case No. 90-ERA-6

WILLIAM DAVID SIMMONS,
Complainant,

v.

ARIZONA PUBLIC SERVICE CO.,
Respondent

JOINT STIPULATION

William David Simmons and Arizona Public Services Company/Arizona Nuclear Power Project, by and through their undersigned counsel hereby jointly stipulate that pursuant to 29 CFR §18.9 (b), the settlement agreement in the above-captioned case which was signed by all parties on January 5, 1990, be amended to include the following:

1. The Administrative Law Judge's order shall have the same force and effect as an order made after full hearing;

2. That the entire record on which any order may be based shall consist solely of the complaint, order of reference or notice of administrative determination, as appropriate, and the agreement;
3. That the parties agree to a waiver of any further procedural steps before the Administrative Law Judge and
4. That the parties agree to a waiver of any right to challenge or contest the validity of the order entered into in accordance with the agreement.

RESPECTFULLY SUBMITTED this day of January, 1990.

SNELL & WILMER

By

Rebecca Winterscheiet
3100 Valley Bank Center
Phoenix, Arizona 85073
Attorney for Respondent
Arizona Service Company/
Arizona Nuclear Power

Project

KOHN, KOHN & COLAPINTO, P.C.

By

Stephen M. Kohn
517 Florida Ave., N.W.
Washington, D.C. 20001
Attorneys for Complainant
William David Simmons

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